

United States Senate
WASHINGTON, DC 20510

March 10, 2021

The Honorable Allison Herren Lee
Acting Chair
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549

Dear Acting Chair Lee:

We were deeply disappointed with the December 16, 2020 decision by the Securities and Exchange Commission (SEC) to issue a weak rule implementing Section 1504 of the Dodd-Frank Act. The final rule fails to provide the level of granular transparency necessary to satisfy the original bipartisan Congressional intent behind the statute and it significantly diverges from the international payment transparency standard for the oil, gas, and mining industries reflected in transparency regulations in other markets and the Extractive Industry Transparency Initiative (EITI). We agree with the concerns you¹ and Commissioner Crenshaw² outlined in your dissenting views during December's meeting to finalize the rule. As you both correctly pointed out, Congress intended the U.S. to lead on extractive industries transparency and in the fight against corruption, but with the current version of the final rule we would fall far behind.

We note with concern that the SEC failed to take into account significant comments received during the public comment period, including in particular the views of stakeholders who have engaged with the SEC for over a decade on the rule. As we noted in our December 11, 2020 letter to former Chairman Clayton, to which we did not receive a response, the vast majority of commenters during the public comment period urged the SEC to strengthen its proposed rule to ensure consistency with other markets and the EITI standard. This position was strongly expressed by a wide range of stakeholders, including investors, many of the world's largest oil, gas and mining companies, domestic and international civil society organizations seeking to use the information, and anti-corruption and legal experts. The SEC's rule, which is far weaker than those in place in other markets, ignores these significant comments, undermines U.S. leadership in the fight against corruption, and is at odds with the original statutory objective to support international transparency promotion efforts.

The SEC can and must act to strengthen certain key aspects of the rule to ensure it satisfies the anti-corruption and investor protection objectives of the original statute. Most

¹ <https://www.sec.gov/news/public-statement/lee-resource-extraction-2020-12-16>

² <https://www.sec.gov/news/public-statement/crenshaw-statement-resource-extraction>

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importantly, the rule must require payment disclosure that is disaggregated and publicly disclosed on a project-basis, with "project" defined as the contract, lease or license that forms the basis of the payment liability, consistent with the definition already used in other markets and the EITI. The rule must also eliminate the overly broad exemptions that allow too many companies to avoid disclosure, creating a significant gap in the intended transparency of Section 1504, and ensure investor protection by requiring that disclosures be filed rather than furnished. With increased volatility and uncertainty in the oil, gas, and mining sectors, investors require more information to inform their decisions and safeguard their interests.

We urge the SEC to act swiftly to amend the December 16, 2020 rule to ensure it serves as an effective tool for combating corruption and provides critical information to investors. The United States has long been a global leader in fighting corruption and ensuring transparency of its markets, and protecting U.S. investors by providing access to valuable information to assess risk and company performance. It is time for the U.S. – and the SEC – to reclaim that leadership role and recommit to acting in the best interests of investors. The SEC must ensure its rulemaking is responsive to stakeholder concerns.

We look forward to working with the SEC in its efforts to fight corruption, protect American investors, and reclaim American leadership in promoting extractive sector transparency. We believe swift administrative action to amend this rule will further these objectives.

Sincerely,



Benjamin L. Cardin
United States Senator



Richard J. Durbin
United States Senator

CC: Commissioner Hester M. Peirce
Commissioner Elad L. Roisman
Commissioner Caroline A. Crenshaw
John Coates, Acting Director, Division of Corporation Finance